

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:09cv15**

<b>BSN MEDICAL, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	
	)	
<b>PARKER MEDICAL ASSOCIATES LLC,</b>	)	<b>ORDER</b>
<b>and A. BRUCE PARKER,</b>	)	
	)	
<b>Defendants.</b>	)	
_____	)	

This matter is before the court on defendants' Motion to Call Glenn F. Cueman Out of Order or, In the Alternative, to Have Him Declared Unavailable for Live Testimony, pursuant to Rules 43 and 32(a)(4)(E) of the Federal Rules of Civil Procedure [docket #326].

In support of the motion, defendants state that Cueman is a critical witness in this case because he personally witnessed dosing and wicking being performed at Zimmer for the purposes of bulk manufacturing of cast tape. Cueman is under subpoena. He has, however, previously planned a trip to Ireland to celebrate his 40<sup>th</sup> wedding anniversary, and he is scheduled to leave on December 10, 2011.

Defendants state that if plaintiff has not rested its case by 10:00 a.m. on Friday, December 9, 2011, defendants may not be able to present the testimony of Cueman unless the court allows him to be called as a witness out of order. Defendants state that Cueman is available to testify at any point during the week of December 5-9, 2011, and defendants

anticipate that Cueman's testimony could be completed in fewer than four hours, including cross-examination.

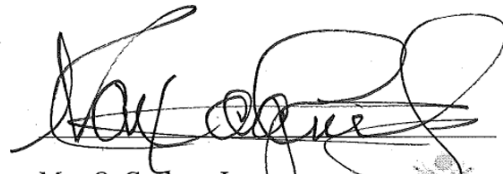
Defendants therefore request that, in the event that plaintiff has not rested its case by 10:00 a.m. on Friday, December 9, 2011, defendants be permitted to call Cueman as a witness at that time and complete his testimony to allow him to travel to Ireland the next day. Defendants request, alternatively, that if Cueman is not permitted to testify during the week of December 5, 2011, that the court declare him unavailable to testify pursuant to FED. R. CIV. P. 32(a)(4)(E) so that defendants can play his video deposition in its entirety to the jury.

Plaintiff has indicated that it does not intend to file a formal objection to defendants' motion. Plaintiff has informed the court, however, that if plaintiff has not rested its case by 10:00 a.m. on Friday, December 9, 2011, plaintiff would prefer for the court to declare Cueman unavailable to testify pursuant to FED. R. CIV. P. 32(a)(4)(E) so that defendants can play his video deposition in its entirety to the jury during defendants' case in chief.

### **ORDER**

The court will **GRANT** defendants' motion [docket #326]. If plaintiff has not rested its case by 10:00 a.m. on Friday, December 9, 2011, defendants shall be permitted to call Cueman as a witness at that time and complete his testimony to allow him to travel to Ireland the next day. Alternatively, defendants may play Cueman's video deposition in its entirety to the jury during defendants' case in chief.

Signed: November 30, 2011



Max O. Cogburn Jr.  
United States District Judge